IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1055 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SATYADEV CHEMICALS PVT LTD - Appellant(s)

Versus

S. DAVE & CO. - Respondent

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Appearance :
Ms. V.D. Nanavati for the appellant
MR NK MAJMUDAR with Ms. Moksha Thakkar for the respondent
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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 31/08/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

The present First Appeal under Section 96 of the Code of Civil Procedure has been filed by the unsuccessful defendant against judgement and decree dated 20th February, 2003 passed by the learned Second Joint Civil Judge (Senior Division), Vadodara, in Summary Suit No. 544 of 1993.

2. The facts necessary for disposal of the present appeal are that the plaintiff filed a Suit to recover a sum of Rs. 18,06,295.90 with interest at the rate of 21.5 per cent. The Suit was filed under the provisions of Order 37 of the Code of Civil Procedure, summons for appearance were served upon the defendant, the defendant accordingly appeared and thereafter summons were served upon the defendant. The defendant raised various pleas before the Court in his application for leave to defend and also submitted that the defendant, namely, M/s. Satyadev Chemicals Pvt. Ltd., was a sick Company and as the proceedings

were pending before the BIFR, the proceedings in the Summary Suit could not be drawn further. Various other defences were also raised. The trial Court after hearing the parties granted conditional leave subject to payment/deposit of 25 per cent of the suit claim.

3. The defendant being aggrieved by the said conditional leave came to this Court in Civil Revision Application No. 734 of 1996. The said matter was heard by the learned Single Judge and the Revision came to be dismissed by this Court on 11.12.1998.

4. The defendant being aggrieved by the said judgement and order preferred SLP(C) No. 1403 of 1999, on 8.3.1999 the Hon'ble Apex Court directed issuance of the notice and also issued order for stay of the order dated 4.4.1996 passed by the Civil Judge, Third Court, Vadodara in Summary Suit No. 544 of 1993. By order dated 10.12.1999,

the Apex Court granted leave, the matter was registered as Civil Appeal No. 7181 of 1999. The Apex Court in view of the judgement of the said Court in the matter of Tata Davy Ltd. Vs. State of Orissa & Ors. (1997) 6 SCC 669 allowed the appeal and set aside the judgement and order under challenge. It however ordered that it shall be open to the respondents to apply to the BIFR for leave to continue the suit.

5. After 10.12.1999, in fact, there was no order of granting conditional leave. It appears that thereafter the plaintiff made application to the learned Members of the BIFR who were pleased to decide the leave Application and directed that the Special Directors of the defendant be instantly discharged with immediate effect. The learned trial Judge had taken everything into consideration but observed that after discharge of the Special Directors by the Hon'ble Members of the BIFR the defendant had no proceedings in

any of the Courts i.e., before the High Court or Hon'ble Supreme Court or BIFR. The learned trial Judge also observed that after dismissal of Civil Revision Application No. 734 of 1996 and vacation of the interim order, the defendant was obliged to observe the condition of making deposit of 25 per cent and as the defendant did not comply with the said direction, the plaintiff was entitled for a decree under Order 37 of the Code of Civil Procedure.

6. The trial Court after recording afore-referred findings, accordingly, decreed the Suit, therefore, the defendant is before this Court.

7. Learned counsel for the appellant submitted that once the order granting conditional leave was set aside by the Apex Court then the trial Court virtually was in contempt in observing an order which was set aside by the Supreme Court. It is submitted that if the order granting

conditional leave was not in existence as the same was set aside by the Apex Court then its compliance was an impossibility. It is also submitted that though the proceedings before BIFR came to an end but in absence of a fresh order granting leave to the defendant conditionally or unconditionally, a decree could not be passed under the provisions of Order 37 Rule 3(6)(b) of the Code of Civil Procedure.

8. Learned counsel for the respondent on the other hand vehemently opposed the contention but was unable to say that on the date of the order passed/decree made by the trial Court any order granting leave was in existence.

9. From the above narrated facts, it would clearly appear that conditional leave was granted in favour of the defendant, order was confirmed by this Court but the Supreme Court allowed the appeal filed by the defendant. If the appeal

filed by the defendant was allowed by the Apex Court and the orders passed by the High Court and trial Court were set aside then the order granting conditional leave was not in existence. If there was no order which was required to be complied with by the defendant then the decree under Order 37 Rule 3 could not be granted or made in favour of the plaintiff. The judgement and decree passed by the trial Court on this very ground deserve to be set aside, those are accordingly set aside.

10. The question posed before us still is whether the matter be remitted to the trial Court for reconsideration of question of grant of leave or should we ourselves look into the question and grant leave conditional or unconditional.

11. After hearing the parties we are of the view that the defendant is entitled to unconditional leave. Leave is accordingly granted. The matter

is remitted to the trial Court for disposal of the Suit in accordance with law.

12. The parties shall appear before the trial Court on 26.9.2005. Either on the said date or within the time extended by the trial Court the defendant shall submit his written statement. After the written statement is submitted, the trial Court shall proceed to decide the Suit in accordance with law preferably within a period of eight months from the date of appearance of the parties and if for some reason or other the trial Court is not able to dispose of the Suit then it shall inform this Court the reasons which compelled it to cause delay in the matter. No order as to costs.

(R.S. GARG, J)

(K.M. MEHTA, J)

(pkn)